



# **The Commonwealth of Massachusetts**

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## **DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

D.T.E. 06-70

August 11, 2006

Investigation by the Department of Telecommunications and Energy on its own motion pursuant to Chapter 123 of the Acts of 2006, § 115, to establish the maximum rates and fees to be charged by the Massachusetts Turnpike Authority to wireless providers for the placement and use of wireless attachments in the central artery tunnels.

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VOTE AND ORDER TO OPEN INVESTIGATION

## VOTE AND ORDER TO OPEN INVESTIGATION

### I. INTRODUCTION

In this Order, the Department of Telecommunications and Energy (“Department”) opens an investigation pursuant to Chapter 123 of the Acts of 2006, § 115 (“Section 115”), to establish the maximum rates and fees which can be charged by the Massachusetts Turnpike Authority (“MTA”) to wireless providers for the placement and use of wireless attachments in the central artery tunnels. In Section 115, the General Court directed the MTA to ensure that a wireless communications system is established in the central artery tunnels no later than December 31, 2006. Also in Section 115, in order to effectuate the provision of wireless communications services in the central artery tunnels, the General Court directed the Department to “open a proceeding to establish the maximum rates and fees which can be charged by the [MTA] to wireless providers for the placement and use of wireless attachments in the central artery tunnels,” and to issue an Order establishing the rates and fees for wireless attachments within 180 days of the effective date of Section 115 (*i.e.*, by December 21, 2006).<sup>1</sup>

### II. PROCEDURAL SCHEDULE

The Secretary of the Department will publish the attached notice of investigation and public hearing as directed in this Order. In addition, the MTA is required to forward this Order and the attached notice to all wireless providers with whom the MTA has been in contact regarding the placement and use of wireless attachments in the central artery tunnels. The

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<sup>1</sup> The effective date of Section 115 was June 24, 2006. Accordingly, the Department must issue a final Order on or before December 21, 2006.

MTA shall provide proof of such notification at or before the public hearing to be held at 10:00 a.m. on Wednesday, August 30, 2006, at the Department's offices at One South Station, Boston, Massachusetts 02110. The public hearing will be followed immediately by a procedural conference, at which time a procedural schedule for this investigation will be established for the orderly conduct of this proceeding. The Department will be the final judge of the schedule and its components in balancing due process requirements against the strict timetable mandated by statute. Petitions to intervene in this proceeding will be accepted until 5:00 p.m. on Tuesday, August 29, 2006.

### III. MTA PROPOSAL

As part of this proceeding, the MTA is hereby required to file with the Department and all parties required to be served in this proceeding, on or before Friday, September 1, 2006, a comprehensive proposal presenting, through expert testimony, its proposal for establishing rates and fees to be charged for wireless attachments in the central artery tunnels. The MTA proposal should include, at a minimum, the following:

- (1) a description of the usable space available for wireless attachments in the tunnels;
- (2) the MTA's proposed rates and fees;
- (3) the method used to calculate the proposed rates and fees, and
- (4) supporting data evidencing the anticipated construction, operation, and maintenance costs.

To the extent known, the MTA proposal should also contain a detailed description of the proposed wireless communication system(s) to be installed. Parties to this proceeding, if

allowed by the Department to intervene, will have an opportunity to respond to the MTA proposal, submit counter-proposals, present their own exhibits and witnesses, cross-examine the MTA's witnesses, and seek discovery.

IV. VOTE AND ORDER

Accordingly, the Department hereby

VOTES: To open an investigation to establish the maximum rates and fees to be charged by the Massachusetts Turnpike Authority to wireless providers for the placement and use of wireless attachments in the central artery tunnels; and it is

ORDERED: That within three business days of the date of this Order, the Secretary of the Department shall publish the attached notice in The Boston Globe; and it is

FURTHER ORDERED: That the MTA must forward this Order and attached notice to the wireless providers with whom the MTA has been in contact with regarding the placement and use of wireless attachments in the central artery tunnels; and it is

FURTHER ORDERED: That the MTA file with the Department, on or before September 1, 2006, a comprehensive proposal for establishing rates and fees that the MTA seeks to charge wireless providers for wireless attachments in the central artery tunnels, as described in this Order.

By Order of the Department,

/s/  
Judith F. Judson, Chairman

/s/  
James Connelly, Commissioner

/s/  
W. Robert Keating, Commissioner

/s/  
Brian Paul Golden, Commissioner

## NOTICE OF INVESTIGATION AND PUBLIC HEARING

D.T.E. 06-70

August 11, 2006

Investigation by the Department of Telecommunications and Energy on its own motion pursuant to Chapter 123 of the Acts of 2006, § 115, to establish the maximum rates and fees to be charged by the Massachusetts Turnpike Authority to wireless providers for the placement and use of wireless attachments in the central artery tunnels.

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The Department of Telecommunications and Energy ("Department"), pursuant to Chapter 123 of the Acts of 2006, § 115, has opened an investigation to establish the maximum rates and fees which can be charged by the Massachusetts Turnpike Authority ("MTA") to wireless providers for the placement and use of wireless attachments in the central artery tunnels. This matter has been docketed as D.T.E. 06-70.

The Department will hold a public hearing to receive comment on this matter. The public hearing will be held **10:00 a.m. on Wednesday, August 30, 2006** at the Department's offices at One South Station, Boston, Massachusetts, 02110. The public hearing will be followed immediately by a procedural conference, at which time a schedule for the orderly conduct of this investigation will be established.

Any person who desires to file written comments or to participate in this proceeding shall file an original and three (3) copies of such written comments or petition for leave to intervene in the proceeding with Mary L. Cottrell, Secretary, Department of Telecommunications and Energy, One South Station, Boston, Massachusetts, 02110, not later than close of business (5:00 p.m.) **on Tuesday, August 29, 2006**.

The Department directs the MTA to file with the Department, on or before **Friday, September 1, 2006**, a comprehensive proposal for establishing rates and fees to be charged for wireless attachments in the central artery tunnels. The MTA proposal should include, at a minimum, the following:

- (1) a description of the usable space available for wireless attachments in the tunnels;
- (2) the MTA's proposed rates and fees;
- (3) the method used to calculate the proposed rates and fees; and
- (4) supporting data evidencing the anticipated construction, operation, and maintenance costs.

A petition for leave to intervene must satisfy the timing and substantive requirements of 220 C.M.R. § 1.03. Receipt by the Department, not mailing, constitutes filing and determines whether a petition has been timely filed. A petition filed late may be disallowed as untimely, unless good cause is shown for waiver under 220 C.M.R. § 1.01(4). To be allowed, a petition under 220 C.M.R. § 1.03(1) must satisfy the standing requirements of G.L. c. 30A, § 10.

Please also submit all written pleadings or comments to the Department in electronic format using one of the following methods: (1) by e-mail attachment to [dte.efiling@state.ma.us](mailto:dte.efiling@state.ma.us), [john.j.keene@state.ma.us](mailto:john.j.keene@state.ma.us) and [jesse.reyes@state.ma.us](mailto:jesse.reyes@state.ma.us); or (2) on a 3.5" floppy diskette or CD-ROM. The text of the e-mail or the diskette label must specify: (1) the docket number of the proceeding, D.T.E. 06-70; (2) name of the person or company submitting the filing; and (3) a brief descriptive title of document (e.g., comments or petition to intervene). The electronic filing should also include the name, title and phone number of a person to contact in the event of questions about the filing. Text responses should be written in either Word Perfect, Microsoft Word, or Adobe PDF compatible files. Data or spreadsheet responses should be compatible with Microsoft Excel. All pleadings and comments submitted in electronic format will be posted on the Department's web site: <http://www.mass.gov/dte>.

Any person desiring further information regarding this notice may contact John J. Keene, Jr., Hearing Officer, tel. (617) 305-3624, or Jesse Reyes, Hearing Officer, tel. (617) 305-3735.

By Order of the Department,

/s/  
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Mary L. Cottrell, Secretary